



April 28, 2011

**VIA ELECTRONIC FILING AND EMAIL**

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Public Service Commission of South Carolina  
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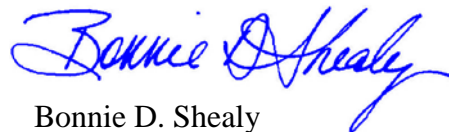
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**Re: Time Warner Cable Information Services Application to Amend its  
Certificate to include Sandhill Telephone Cooperative Service Area  
Docket No. 2011-52-C**

Dear Jocelyn:

Enclosed for filing please find Time Warner Cable Information Services (South Carolina), LLC's, d/b/a Time Warner Cable, motion for an expedited review and waiver of the hearing requirement in the above referenced application. We respectfully request that it be placed on the Commission's agenda for its next meeting or, in the alternative, the remaining testimony deadlines and hearing date be held in abeyance pending a decision on the motion. The Office of Regulatory Staff and counsel for Sandhill Telephone Cooperative, Inc. do not object to the motion. We appreciate your help in this matter. Should you have any questions or need additional information, please contact me.

Very truly yours,  
ROBINSON, MCFADDEN & MOORE, P.C.



Bonnie D. Shealy

/bds  
Enclosure

cc/enc: Lessie Hammonds, ORS Staff Attorney (via email & U.S. Mail)  
Margaret M. Fox, Esquire (via email & U.S. Mail)  
Julie P. Laine, Group Vice President Regulatory (via email)  
Charlene Keys, Area Vice President (via email)

**BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF SOUTH CAROLINA**

**Docket No. 2011-52-C**

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In Re: Application of Time Warner Cable Information	)
Services (South Carolina) LLC, d/b/a Time	)
Warner Cable to Amend its Certificate of Public	)
Convenience and Necessity to Provide	)
Telephone Services in the Service Area of	)
Sandhill Telephone Cooperative, Inc. and for	)
Alternative Regulation	)

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**MOTION FOR EXPEDITED REVIEW OF APPLICATION**

Comes now the Applicant Time Warner Cable Information Services (South Carolina), LLC, d/b/a Time Warner Cable (“Time Warner Cable” or “Applicant”), who hereby moves pursuant to S.C. Code Reg. 103-820, 103-840 and other applicable rules of practice and procedure of the South Carolina Public Service Commission ("Commission") that the Commission perform an expedited review of Time Warner Cable's application to expand its Certificate of Public Convenience and Necessity under Order Nos. 2004-213, 2005-385(A), and 2009-356 to include the service areas of Sandhill Telephone Cooperative, Inc. (“Sandhill”). Time Warner Cable requests that the Commission use its discretionary authority to informally dispose of the proceeding without holding a formal hearing. In support of this motion Time Warner Cable would show the following:

## **FACTUAL BACKGROUND**

1. The Applicant published notice of the filing of the application in area newspapers as required by the Commission. The deadline for filing petitions to intervene in the proceeding was March 10, 2011.

2. On March 10, 2011, Sandhill intervened in the proceeding. Neither Sandhill nor the Office of Regulatory Staff oppose the expansion of Time Warner Cable's service area and neither object to this motion. Sandhill's agreement not to oppose the application is based on its understanding that Time Warner is seeking the same authority that was granted by the Commission in Order No. 2009-356 with respect to other rural LECs' service areas, subject to the same terms and conditions as stated therein. No other comments or petitions to intervene have been filed.

3. Time Warner Cable is a limited liability company organized under the laws of the State of Delaware. Time Warner Cable was authorized to provide interexchange and local voice services to customers in Order Nos. 2004-213, 2005-385(A), and 2009-356.

4. Time Warner Cable seeks to expand its authority to include the Sandhill service area. Upon approval of the application, Time Warner Cable's authorized certification area would include the Sandhill service area. Time Warner Cable's financial, technical and managerial qualifications are more fully described in the verified testimony of Charlene Keys which was filed with the Commission on April 26, 2011.

## **ARGUMENT**

5. Time Warner Cable filed its application pursuant to S.C. Code Ann. § 58-9-280(B) seeking to amend its certificate of Public Convenience and Necessity to expand its service area to

include Sandhill's service area. Section 58-9-280(B) provides that "[a]fter notice and an *opportunity to be heard*, the Commission may grant a certificate to operate as a telephone utility...to applicants proposing to furnish local telephone service in the service territory of an incumbent LEC...." S.C. Code Ann. § 58-9-280(B) (Supp. 2010). Notice has been published as required by the Commission and any interested party, including Time Warner Cable has thus had an *opportunity* for a hearing. Therefore, the Commission has satisfied the statutory requirements. Time Warner Cable submits that the Commission now has the discretion under Section 58-9-280(B) to consider Time Warner Cable's application without a full, evidentiary hearing.

6. Time Warner Cable seeks expedited review of its application on the grounds that (1) the South Carolina Administrative Procedures Act ("APA") grants the Commission flexibility regarding hearings in contested matters, (2) due process requirements are satisfied if Time Warner Cable waives the right to a hearing when there is no disputed material issue of fact, and (3) notice and the opportunity to present written evidence is sufficient to provide the procedural due process protection required under the APA.

7. Administrative agencies in South Carolina "are required to meet minimum standards of due process. Due process is flexible and calls for such protections as the particular situation demands." *Stono River Environmental Protection Association v. S.C. Dept. of Health and Environmental Control*, 406 S.E.2d 340, 342 (S.C. Sup. Ct. 1992); *Anonymous v. State Board of Medical Examiners*, 473 S.E.2d 870 (S.C. Ct. App. 1996) citing *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972).

The APA provides that "in a contested case, all parties must be afforded an opportunity for hearing after notice not less than thirty days." S.C. Code Ann. § 1-23-320(a) (Supp. 2010). The APA defines "contested case" as "a proceeding, including but not restricted to ratemaking, price fixing,

and licensing, in which the legal rights, duties or privileges of a party are required by law to be determined by an agency after an opportunity for hearing." S.C. Code Ann. § 1-23-310(2) (Supp. 2010).

The provisions of the APA ensure that procedural due process requirements are satisfied. The APA also provides some flexibility to agencies regarding hearings for contested cases. "Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default." S.C. Code Ann. § 1-23-320(f) (Supp. 2010). Notice of the company's application was published as required by the Commission. Therefore, notice and an opportunity for a hearing have been provided as required by the APA and S.C. Code Ann. Section 58-9-280(B). Sandhill and the Office of Regulatory Staff do not object to the motion.

Time Warner Cable is currently certificated to provide local and long distance voice services in South Carolina and has been offering the services since shortly after receiving its original certificate in 2004. Therefore, the Commission is aware of the technical, managerial and financial background relied upon by Time Warner Cable in its application. Time Warner Cable respectfully requests that the Commission apply S.C. Code Section 1-23-320(f) of the APA and informally dispose of the proceeding without requiring a formal hearing.

8. Holding a formal hearing "is appropriate where adjudicative facts involving the particular parties are at issue. Conversely, an agency may ordinarily dispense with hearing where there is no genuine dispute as to a material issue of fact." 2 Am. Jur.2d *Administrative Law* § 298. In addition, "the right to a hearing...may be waived." 2 Am. Jur.2d *Administrative Law* § 296.

Time Warner Cable is requesting the hearing be waived and there are no intervenors opposing its certification in the proceeding. Time Warner Cable's financial, technical and managerial qualifications are outlined in the testimony of Ms. Keys filed on April 26, 2011. The Commission

has previously held a hearing concerning Time Warner Cable's fitness to provide telecommunications services in the state. Therefore, there is no material issue of fact to be decided at a formal hearing.

9. Notice and the opportunity to present written evidence would satisfy due process requirements for the Time Warner Cable application. Case law in other jurisdictions supports the proposition that holding a hearing is not required in all situations. One case noted that the "flexibility of the scope of due process is a recognition that not all situations calling for procedural safeguards call for the same kind of procedure....There are times when no more is required than notice and the opportunity to present reasons, either orally or in writing, why the proposed action should not be taken." *Bartlett v. Krause*, 551 A.2d 710, 722 (Ct. Sup. Ct. 1988).

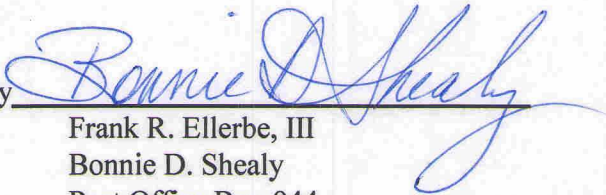
Another case noted that "[d]ue process does not always require an administrative agency to hold an evidentiary hearing before it goes about the business it was created to conduct....Sometimes nothing more is required than notice and the opportunity to present reasons, either orally or in writing, why the proposed action should not be taken." *In the Matter of the Request for Solid Waste Utility Customer Lists*, 524 A.2d 386, 393 (N.J. Sup. Ct. 1987). In *Request for Solid Waste*, the Court held that since "the proceeding did not involve any disputed facts, a full evidentiary hearing would have been unnecessary and burdensome, both fiscally and administratively, to the agency." *Id.*

Time Warner Cable has presented the information required under S.C. Code § 58-9-280(B) in its application and the testimony of Charlene Keys. Since Sandhill and the Office of Regulatory Staff do not object to the motion, Time Warner Cable asserts that a full evidentiary hearing on its application is unnecessary.

WHEREFORE, Time Warner Cable respectfully requests that the Commission informally dispose of the proceeding without holding a hearing and grant its request to amend its Certificate of Public Convenience and Necessity to Provide Telephone Services in the Sandhill service area and that the Commission regulate its voice services in accordance with Order No. 2004-495.

Dated this 28<sup>th</sup> day of April, 2011.

ROBINSON, McFADDEN & MOORE, P.C.

By 

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Attorneys Time Warner Cable Information Services  
(South Carolina), LLC

**BEFORE  
THE PUBLIC SERVICE COMMISSION  
OF SOUTH CAROLINA  
DOCKET NO. 2011-52-C**

In Re: )  
)  
Application of Time Warner Cable )  
Information Services (South )  
Carolina) LLC, d/b/a Time Warner )  
Cable to Amend its Certificate of )  
Public Convenience and Necessity )  
to Provide Telephone Services in )  
the Service Area of Sandhill )  
Telephone Cooperative, Inc. and )  
for Alternative Regulation

**CERTIFICATE OF SERVICE**

This is to certify that I, Leslie L. Allen, a legal assistant with the law firm of Robinson, McFadden & Moore, P.C., have this day caused to be served upon the person(s) named below the **MOTION FOR EXPEDITED REVIEW OF APPLICATION** in the foregoing matter by placing a copy of same in the United States Mail, postage prepaid, in an envelope addressed as follows:

Lessie Hammonds, Esquire  
Office of Regulatory Staff  
1401 Main Street, Suite 900  
Columbia, SC 29201

Margaret M. Fox, Esquire  
McNair Law Firm, PA  
P.O. Box 11390  
Columbia, SC 29211

Dated at Columbia, South Carolina this 28th day of April, 2011.

  
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Leslie L. Allen